IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA	§	
	§	
vs.	§	DOCKET NUMBER
	§	3:14CR 293-M
	§	
JOHN WILEY PRICE (1)	§	
KATHY LOUISE NEALY (2)	§	
DAPHENY LOUISE FAIN (3)	§	

KATHY LOUISE NEALY'S MOTION FOR A PROTECTIVE ORDER DENYING REQUEST FOR PRODUCTION OF PHOTOGRAPHS TAKEN DURING THE SEARCH OF HER HOME, OFFICE, AND STORAGE FACILITY AND INCORPORATED MEMORANDUM

Introduction

During the recent trial of Dallas County Commissioner John Wiley Price and Ms. Dapheny Fain, photographs that were taken during the search of Kathy Louise Nealy's home, office, and storage facility were introduced into evidence. Because Ms. Nealy was not a defendant during this trial, she did not have any opportunity to object to the introduction of those photographs or to be heard in any way with respect to those exhibits. Yet, Ms. Nealy now faces public disclosure of photographs of her personal belongings and space which photographs have never been introduced in a trial against her. The protections afforded trial defendants under the constitution and common law against production of exhibits in response to media requests should apply with even greater force to an individual who was not a defendant at that trial.

Legal Standards

The leading case addressing the production of trial exhibits to the media is *Nixon v. Warner Communications,* 435 U.S. 589, 599 (1978). This case involved a media request for production of the twenty-two hours of White House tape recordings that had been played in the highly public trial of John N. Mitchell, former Attorney General, H. R. Haldeman, John D. Ehrlichman, and other White House officials. The Supreme Court rejected Warner's argument that the First and Sixth Amendments' guarantee of a public trial mandated the production of the tapes. The issue as defined by the Court was "whether these copies of the Nixon White House tapes—to which the public has never had *physical* access—must be made available for copying." *Id at* 609. The Supreme Court held that "[t]he requirement of a public trial is satisfied by the opportunity of members of the public and the press to attend the trial and to report what they have observed. That opportunity abundantly existed here." *Id.* at 610.

Cases applying the reasoning of *Nixon v. Warner Communications* likewise look to the access granted the media during the trial. In *United States v. Beckham,* 789 F.2d 401, 409 (6th Cir. 1986), the Court found that "find that there was no obstruction of the free flow of information. There were no restrictions on media access to the trial or on the publication of information in the public domain."

Common law can provide a right to access to exhibits "and while there is a presumption in favor of disclosure, this common law right must at times give way to other important considerations, such as the protection of a litigant's constitutional rights." *Application of Nat'l Broadcasting Co., Inc.,* 635 F.2d 945, 950 (2d Cir.1980) (citing *Warner Commc'ns,* 435 U.S. at 598) (quotation marks and further citations omitted)); *see Beckham,* 789 F.2d at 409, 413 (citation omitted). It is not an absolute right of access. Any decision as to access to exhibits "is one best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case." *Nixon v. Warner Communications,* 435 U.S. at 599. In exercising this discretion, the Court has the power to "insure that its records are not "used to gratify private spite or promote public scandal" through the publication of "the painful and sometimes disgusting details of a divorce case." *Nixon v. Warner Communications,* 435 U.S. at 598.

NEALY RELATED PHOTOGRAPHS

In evaluating whether photographs relating to Ms. Nealy should be made available to the media, it is important to note that Ms. Nealy was not a participant in the trial proceeding. She had no ability to object to the introduction of any of the photos. Consequently, her privacy interest in the photographs cannot be deemed to be diminished by the trial.

There are a number of exhibits which were introduced that contained photographs relating to Ms. Nealy.[1] Four of those exhibits are:

Gov. Ex. 1165: search photographs of Ms. Nealy's office on State Street

Gov. Ex. 1155: search photographs of Ms. Nealy's residence

Gov. Ex. 1163: search photographs of Ms. Nealy's storage shed

Gov. Ex. 1156: search photographs of Ms. Nealy's vehicle

Additionally, the government introduced search photographs of Ms. Nealy's BMW. Commissioner Price also introduced government surveillance photographs of Ms. Nealy and family members getting out of her BMW. Ms. Nealy does not have the exhibit numbers associated with those photographs.

In considering the release of the photographs, the Court should take into consideration several factors. First, Ms. Nealy has not been to trial on these matters. Second, the photographs of her residence clearly invade her privacy as they depict her personal furnishings and possessions. The photographs of her

[1] Because Ms. Nealy was not a party to the trial, she does not have a copy of the trial exhibits. Ms. Nealy is relying upon the assistance provided by co-counsel in segregating and identifying the relevant photographs.

office likewise depict personal items, such as file folders, mail, labeled boxes of materials, and notations. Even if an argument could be presented that an office is sometimes public space, it is clear that the materials depicted in these photographs extend far beyond anything that would have been observable to a mere visitor to her office. Pictures of her storage shed also depict personal items, including business records and belongings. And, clearly public disclosure of the photograph of Ms. Nealy with family members unduly impacts those relatives.

CONCLUSION

WHEREFORE, it is respectfully requested that this motion be granted and that the Court deny copying of the photographs related to Ms. Nealy's residence, office, storage shed, and vehicles.

Respectfully submitted,

__s/ Cheryl B. Wattley____
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CERTIFICATE OF CONFERENCE

I hereby certify that late on the afternoon of May 12, 2017 an email was sent to Walt Junker and Nick Bunch of the United States Attorney's Office for the Northern District of Texas seeking a position as to this motion, however, no response was received.

s/Cheryl B. Wattley

CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2017 a copy of this motion was served upon all counsel of record by filing with the ECF system for the Northern District of Texas.

/s/ Cheryl B. Wattley